

CITY OF ATLANTA CIVIL SERVICE BOARD
ORDER

APPEAL NO. 2021-001AP
APPELLANT: PHILIP SKIDMORE
Atlanta Police Department (the "Department")

Effective Date: January 18, 2021
Hearing Date: April 15, 2021

ACTION:
18-Day Suspension

HEARING OFFICERS
Sterling P. Eaves, Chair
Robert Hawkins
E. Carl Touchstone, DWB

APPEARANCES

City of Atlanta ("City"):

Counsel/Representative:
Shemia Washington, Esq.

City of Atlanta's Witnesses:
Arthur Nixon
SPO Patrick Fite
Captain Hajredin Zenelaj
Asst. Chief Todd Coyt

Appellant:
Phillip Skidmore

Counsel/Representative:
Stephanie A. Mutti, Esq.

Appellant's Witnesses:
Inv. Joshua Shields
Appellant Phillip Skidmore

STATEMENT OF AUTHORITY

Under the authority and provisions of Chapter 114, Article VI, Division 3, Sections 114-546 through 556 of the Atlanta City Code (the "Code"), a hearing conference in the above-referenced case was held before the above-named hearing officers of the Atlanta Civil Service Board (the "Board") on the date set forth above, via a Zoom Webinar, facilitated by the City, pursuant to Mayor Keisha Lance Bottoms' Executive Order regarding the Covid-19 Pandemic.

EXHIBITS

City of Atlanta

C-1 Atlanta Police Department Notice of Final Adverse Action (NFAA), dated January 5, 2021

C-7 APD Video Clip – Szutor BWC

C-8 Atlanta Police Department Notice of Proposed Adverse Action (NPAA), dated January 4, 2021

Appellant Skidmore

A-1 Audio Clip: Radio Traffic

A-4 Photo from APD Officer Szutor

A-8 APD Video Clip – Szutor BWC

A-9 APD Video Clip – Szutor Car Camera Clipped

A-10 APD Video Clip – McGhow slow motion Clip

Stipulations

None.

VIOLATIONS

Atlanta Police Department Work Rules:

4.2.37 Unsatisfactory Performance

4.2.50 Maltreatment or Unnecessary Force

4.6.9 Use of Firearms

FINDINGS OF FACT

1. Appellant Philip Skidmore (“Appellant”) is employed by the City of Atlanta (the “City”) in the Atlanta Police Department (the “Department”).
2. Appellant has worked with the Department approximately 7.5 years and is currently a Criminal Investigator in Zone 2.
3. On August 29, 2020, while on duty, Appellant responded to the area of 14th Street to investigate a suspicious vehicle (the “Vehicle”) that was believed to have been involved in numerous crimes.
4. Appellant was driving an unmarked unit at the time.
5. During the investigation, Appellant attempted to block the path of the Vehicle with his unmarked city vehicle.
6. Appellant pulled up next to the Vehicle and shot at the tire to disable car.

7. As the driver of the Vehicle fled the area driving erratically, Appellant fired several more rounds in an attempt to disable the Vehicle.
8. BWC footage showed that Appellant fired a total of eight rounds from his city issued weapon during this encounter.
9. The alleged suspect(s) were not apprehended.

DISCUSSION

Based on the results of the investigation into the officer involved shooting by Appellant on August 29, 2020, the City determined that Appellant violated the following Work Rules: *4.2.37 Unsatisfactory Performance, 4.2.50 Maltreatment or Unnecessary Force, and 4.6.9 Use of Firearms*. The City ultimately suspended Appellant eighteen (18) days for these violations. Appellant appeals this decision.

Appellant has been with the Department approximately 7.5 years. He is a Criminal Investigator assigned to Zone 2. On August 29, 2020, Appellant, along with Investigator Joshua Shields (“Shields”), were traveling in a city owned unmarked unit. While on or near 14th Street, Appellant heard an alert about a suspect attempting to steal a vehicle. A marked police unit was also called to get behind the Vehicle. Another officer with the Department encountered the Vehicle in a parking lot on 13th Street. Appellant drove to the parking lot area, and hopped a curb with his unmarked city unit, to assist at the scene. During this encounter, Appellant came up next to the Vehicle and fired a shot at the tire. The Vehicle continued on, erratically, and Appellant fired seven (7) additional shots at the Vehicle. Body Worn Camera (BWC) footage showed that Appellant fired a total of eight rounds at the Vehicle. The suspect(s) got away from the scene and were never apprehended. Appellant was not in uniform at the time of this incident. Moreover, Appellant was not wearing a bullet proof vest.

Per Department policy, an investigation is required to be conducted on all officer involved shootings. Said investigation into this matter revealed that Appellant violated several work rules during this encounter on August 29, 2020. Appellant was suspended for eighteen (18) days for the violations. Appellant submits that deadly force was warranted in this case and that he believed the suspect(s) posed an immediate threat to him and his co-workers at the scene.

Work Rule 4.2.37 – Unsatisfactory Performance: 1) Employees shall maintain sufficient competency to perform their duties and assume the responsibilities of their position. Employees shall perform their duties in a manner which shall establish and maintain the highest standards of efficiency in carrying out the functions and objectives of the Department. 2) Unsatisfactory performance may be demonstrated by a lack of knowledge of the application of the laws required to be enforced; an unwillingness or inability to perform assigned tasks; the failure to conform to work standards established for the employee’s rank, grade, or position, the failure to take appropriate action on the occasion of a situation or incident deserving a public safety employee’s attention; absence without

leave; or unexcused absence from a duty assignment during a tour of duty. 3) In addition to other indications of unsatisfactory performance, repeated poor evaluations and/or repeated infractions of Department directives shall be considered prima facie evidence of unsatisfactory performance of duty.

Work Rule 4.2.50 – Maltreatment or Unnecessary Force: 1) Employees are expressly prohibited from the unnecessary or unreasonable use of force against any person or property. 2) Employees shall only use that force, which is reasonable and necessary to affect an arrest, prevent an escape, necessarily restrict the movement of a prisoner, defend himself or another from physical assault, or to accomplish other lawful objectives. The reasonableness inquiry refers to whether the employee's actions are "objectively reasonable" in light of the facts and circumstances confronting him or her, without regard to their underlying intent or motivation. The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, and its calculus must embody an allowance for the fact that police officers are often forced to make split second decisions about the amount of force necessary in a particular situation (Graham v. Connor, 490 U S 386 (1989))*

Work Rule 4.6.9 – Use of Firearms: 1) Employees shall only use deadly force to apprehend a suspected felon when: (a) he or she reasonably believes that the suspect possesses a deadly weapon or any object, device, or instrument which, when used offensively against a person, is likely to or actually does result in serious bodily injury; (b) when he or she reasonably believes that the suspect poses an immediate threat of physical violence to the office or others; (c) or when there is probable cause to believe that the suspect has committed a crime involving the infliction or threatened infliction of serious physical harm (O.C.G.A. Section 17-4-20) if the employee reasonably believes that the suspect's escape would create a continuing danger of serious physical harm to any person. 2) Employees shall not point firearms at persons in circumstances unless the discharge of that firearm would be justifiable. Employees who find it necessary to point a firearm at a person should not interpret this necessity as an obligation to discharge the weapon CALEA 5th ed. Standard 1.3.3. 3) The firing of "warning shots" is generally prohibited due to their potential for harm. 4) An employee may discharge a firearm at a dog or other animal only when no other means to bring the animal under control exists.

The City called Investigator Arthur Nixon ("Nixon"), from OPS and Internal Affairs, as its first witness. Nixon stated that his role in this matter was fact finder. He testified that his unit always investigates when there is an officer involved shooting. Specifically, the issues that Nixon found problematic with the August 29, 2020 encounter by Appellant were: 1) Appellant pulled up next to the Vehicle and fired a shot at the tire; 2) Appellant's unmarked unit and the Vehicle collided; 3) Appellant's unmarked unit rolled back at some point because Appellant forgot to put it in park when he exited and starting firing; 4) As the Vehicle sped away, Appellant fired seven (7) additional shots; 5) Appellant was not wearing a bullet proof vest at the time; 6) Appellant was not in uniform. (According to Nixon, since this incident occurred after the protests earlier in 2020, all officers were supposed to be in uniform, however Nixon mentioned that Appellant was allowed to wear what he wanted, by his supervisor); and 7) Appellant had a duty to respond to the call, but

he needed to do so with caution. Nixon testified that once he completed his investigation, he forwarded the same to his superiors. He does not make recommendations on punishment.

Senior Patrol Officer Patrick Fite (“Fite”) was the City’s next witness. Fite is the Senior Firearms Instructor for the Department. Fite testified that he reviewed footage and still photos of the August 29, 2020 incident, after being asked to review this shooting. Fite stated that this shooting was outside of the Department’s training guidelines. Appellant put himself in unknown danger to stop a car. Fite added that if an officer chose to shoot under these circumstances, it should have been in the passenger area to immobilize the driver and not shoot in the wheel well/tire area. Appellant’s act of shooting at the Vehicle’s tires was not done according to training. Lastly, Fite confirmed that the Department does not train its officer to immobilize a vehicle by shooting at it.

Captain Hajredin Zenelaj (“Zenelaj”), of the Department, testified that he reviewed the facts found by Nixon, along with statements and video, to determine the charges in this matter. For the charge of Unsatisfactory Performance, Zenelaj believed Appellant placed himself and his partner in jeopardy by trying to block the Vehicle. Approaching the Vehicle from the front, was a departure from training. Appellant should not have attempted to stop the Vehicle, while driving an unmarked unit. For the charges of Maltreatment/Unnecessary Force and Use of Firearms, Zenelaj testified that the Department does not train officers to shoot at vehicles, to stop them. He stated that clearly, this was not an exigent situation which warranted firing into the Vehicle.

The City’s final witness was Asst. Chief Todd Coyt (“Coyt”). He testified that he reviewed the investigation packet and video, to make a determination as to the level of discipline to be given in this case. Coyt indicated that the recommended discipline could have been as high as a 30-day suspension. Coyt submits that he believes that the discipline is appropriate and that he specifically wanted training to be an additional condition, because training deficiencies caused the problems in this case.

Appellant called his partner, Investigator Joshua Shields (“Shields”), as his first witness. Shields testified that he and Appellant were going to get coffee when the BOLO came across about the Vehicle. They were stopped at a traffic light on 14th Street when they spotted the Vehicle near them. He testified that they pulled across that street, so as not to be involved, waiting on a marked car. They were being provided updates and believed that Zone 5 would be coming to the area. They noticed that APD Officer Szutor (“Szutor”) came to the scene and pulled into the parking lot, where the Vehicle was. They were concerned with Szutor’s safety and they followed to assist. Szutor’s marked unit was blocking the entrance to the parking lot, and therefore, they had to drive over the curb to get closer. Shields testified that he did fear for Appellant’s safety, during this encounter.

Finally, Appellant testified that they pulled into the lot because they thought the suspects were in the Vehicle. Appellant drove over the curb, trying to remain concealed. According to Appellant, as they hit the curb, the Vehicle accelerated towards them. Appellant began to draw his weapon as he exited his unmarked unit. He testified that he

was an arm-length away from the Vehicle. He realized that he was in a bad situation and thought he was going to die. Appellant testified that deadly force is permitted when an officer reasonably suspects that the individual is armed. Again, he believed that the individuals in the Vehicle posed an immediate threat to him. Appellant stated that he only had seconds to think and therefore he chose to shoot low. He indicated his thought was not to execute the driver, but he was attempting to stop the threat, by shooting at the tires.

Appellant believes that his actions on August 29, 2020 were justified. He submits that this was an emergency situation, and that deadly force was necessary. The problem is that Appellant's actions clearly violated the City Work Rules. Moreover, Appellant was never trained to fire at moving vehicles to disable them. Fortunately, no one was hurt during this encounter. However, Appellant certainly put himself and others in danger by firing upon the Vehicle in the manner that he did.

Based on the evidence presented, the Board believes that the City of Atlanta has met its burden to substantiate the suspension of Appellant in this matter. The City followed the proper procedures in this action and the Board is satisfied that the City's discipline is appropriate in this matter.

After review of the testimony and evidence, the Board concludes that the City was justified in its action of the **18-day suspension** in the instant matter. The City has met its burden concerning all of the allegations as presented.

ORDER

Based on the foregoing, the Board hereby **AFFIRMS** the Appellant's discipline.

This the 14th day of May, 2021.

Signed:

Sterling P. Eaves

Sterling P. Eaves, Chair

Robert Hawkins

Robert Hawkins

E. Carl Touchstone

E. Carl Touchstone, DWB